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DOMESTIC CORPORATIONS.

DELAWARE.

SPECIAL NOTICE. Every Delaware corporation must file its annual report on or before the first Tuesday of January, 1917. Forms and information may be obtained from our office in Wilmington.

WAIVER OF NOTICE OF DIRECTORS' MEETING. The act of a director of a corporation in signing, before the organization of the company a blank form of waiver of notice to him of directors' meetings is insufficient to validate, as against any other stockholder or director, a meeting subsequently held, at which he is not present and of which he receives no notice. Lippman vs. Kehoe Stenograph Co., 98 Atl. 943. See also Corporation Journal, p. 106.

DIRECTORS MUST BE STOCKHOLDERS under the provisions of section 9 of the Corporation Act. A director may be qualified as a stockholder by the assignment of an incorporator's subscription to the capital stock. He loses his status as a director by selling and assigning his shares to another, but where a stockholder assigns his certificate in blank not having sold it, and delivers it to another, not a purchaser, with no intention of either party that the interest of the transferror should terminate, and no transfer of the stock is made on the books of the company, the stockholder does not thereby cease to be the owner of the stock in his own right, or disqualified to be a director. Lippman vs. Kehoe Stenograph Co., 98 Atl. 943. See also Corporation Journal, p. 106.

VALIDITY OF A MEETING ATTENDED BY UNQUALIFIED DIRECTORS. Where in a board of six directors three were ineligible because not stockholders, a directors' meeting of two of the three eligible directors, pursuant to notice to all, was valid, notwithstanding the presence of the ineligible members. Lippman vs. Kehoe Stenograph Co. 98 Atl. 943.

GEORGIA.

A CORPORATION IS SUABLE IN ITS NEW NAME, although the cause of action arose before it changed its name. Porter v. State Grand Lodge, No. 7, 90 S. E. 281.

KANSAS.

PERSONAL LIABILITY OF PARTICIPANTS IN ABANDONED INCORPORATION. All who undertake but fail to form a corporation are liable as partners for stationery and supplies necessary for the proposed corporation and ordered by one of their number. Hall Lithographing Co. v. Crist, 160 Pac. 198.

KENTUCKY.

LOST STOCK CERTIFICATES. Certificates of stock indorsed by the owner, and left blank with respect to the name of the attorney for transfer, were pledged with a bank as collateral security. The certificates disappeared from the bank, being either lost or stolen. The corporation continued to pay dividends to the record owner. Petition to compel the issuance of a duplicate certificate to the administrator of the deceased owner, is dismissed upon failure of the petitioner to furnish the corporation with an indemnity bond. There is no statute, or prior decision in Kentucky upon the question. The Court concludes that the corporation may properly require such protection, but says: "We do not mean to be understood as holding that in every case of demand for the issuance of a duplicate certificate to replace a lost one a bond of indemnity can be required by the corporation before issuing the duplicate, but only mean that the giving of such bond was necessary and properly required on the state of case here presented." Wills Ad'm. v. George Wiedemann Brewing Co., 188 S. W. 778.

APPOINTMENT OF RECEIVER will be decreed "whenever it is clearly demonstrated that a corporation cannot accomplish the purpose for which it was organized." This power, however, "will be cautiously exercised at the instance of minority stockholders, for majority stockholders have the right ordinarily to control the affairs of a corporation and the chancellor will proceed with great care and be sure of his ground before taking that control from them." Metropolitan Fire Ins. Co. v. Middendorf, 188 S. W. 790.

MAINE.

DISSOLUTION. Chap. 400, Public Laws of 1839, providing that all corporations, whose charters shall expire by their own limitation, or annulled by forfeiture or otherwise, shall be continued bodies corporate for three years for the purpose of prosecuting or defending suits, does not apply where a receiver is appointed to wind up the corporate affairs. Carter, Carter & Meigs Co. v. Stewart Drug Co., 98 Atl. 809.

NEW BRUNSWICK.

OMISSION OF THE WORD "LIMITED" from a corporate name in an affidavit pertaining to an action of replevin is a mere irregularity and does not nullify the affidavit. Dalhousie Lumber Co. v. Walker, 30 D. L. R. 498.

NEW JERSEY.

DAMAGES FOR REFUSAL TO REGISTER A TRANSFER OF STOCK depend upon the nature of the action. If the plaintiff claims for a conversion of the stock, so that upon payment of a judgment the title would pass to the judgment debtor, he may recover its value. If he claims special damages and seeks to retain title to the stock he is not entitled to its full value. Courts differ as to whether the value at the time of the alleged conversion should be taken, or the value at the time of trial or the highest intermediate value. New Jersey follows Massachusetts and England in adopting the rule of value at the time of refusal to transfer. In the words of the Court, this rule "has the merit of being in harmony with the ordinary rule of damages in the case of conversion of goods. While it makes it possible for the wrongdoer to profit by a subsequent rise of value, it prevents both parties from speculating thereon." In the instant case, where it seems probable that the stock has not been in fact fully paid and is still liable to assessment, there is no presumption that it is worth par. In the absence of proof of value, plaintiff is entitled to nominal damages only. Siegel v. Riverside Box and Lumber Co. Court of Errors and Appeals, decided Nov. 20, 1916 (not yet officially reported.)

IN AN ACTION OF DECEIT against a corporation for false representations inducing the purchase of its stock, it is necessary to prove the value of the corporation's assets, in order to show that the stock was worth less than the plaintiff paid for it. Bingham v. Fish, Court of Errors and Appeals, November 20, 1916. (Not yet officially reported.)

NEW YORK.

FAILURE TO PAY TEN PER CENT. UPON INITIAL SUBSCRIPTION does not render stock void so as to excuse the subscriber from liability for payment of the balauce upon bankruptcy of the corporation. The subscriber paid $200 for 102 shares, received several dividends thereon, sold the stock, and is now sued for $10,000. Jeffry v. Selwyn, 173 A. D. 217.

ACTION BY STOCKHOLDERS FOR AN ACCOUNTING OF PROFITS made by two directors from moving picture films alleged to belong to the corporation will be dismissed, where it is not alleged that other members of the board are dominated by the two, and no demand has been made upon the directors that they bring the action on behalf of the corporation. Dillon v. Pan-American Theatrical Co., 96 N. Y. Misc. 501.

CONTRACT EMPLOYING A TREASURER FOR A PERIOD IN EXCESS OF ONE YEAR is not *ultra vires*, though the by-laws provide that the treasurer shall be elected each year and may be removed at the pleasure of the directors. Reiss vs. Usona Shirt Co., 159 N. Y. Supp. 1031.

NORTH CAROLINA.

LIABILITY OF DIRECTORS FOR NEGLIGENT MANAGEMENT. The directors are liable for the damages suffered by one who sold goods to a corporation, subsequently found to be insolvent, it appearing that the directors met as a board but three times from 1909 to 1911, and delegated their work to a finance committee which in turn left the running of the business almost exclusively to a manager. "While the directors are not liable for losses resulting from mistakes of judgment, such as are excused in law, they are liable for losses resulting from gross mismanagement and neglect of the affairs of the corporation. Good faith alone will not excuse them when there is lack of the proper care, attention and circumspection in the affairs of the corporation which is exacted of them as trustees." Anthony v. Jeffress. 90 S. E. 414.

OHIO.

NET EARNINGS WHICH PERMIT THE PAYMENT OF A DIVIDEND are the surplus earnings that remain after defraying every expense, including loans falling due and interest thereon. Thomas v. Matthews, 113 N. E. 669.

CONTRACT BY DIRECTOR RELATING TO PAYMENT OF DIVIDENDS IS VOID. "A contract written in 1905 requiring a director of a corporation to declare and pay in dividends the entire net earnings of the company in the years 1910 and 1911, regardless of the financial condition of the company, its losses in previous years, and its maturing debts and interest, could not be sustained upon any theory. In human affairs there is no such thing as certainty. No stockholder or director can know in 1905 what the financial condition of a corporation will be in 1911, or, for that matter, in any of the intervening years. Such a contract would prevent him from exercising a fair and unbiased judgment upon the facts and conditions presented for his consideration in 1911, and is necessarily void." Thomas v. Matthews, 113 N. E. 669.

OKLAHOMA.

LIABILITY OF AN ORIGINAL SUBSCRIBER TO CREDITORS TO PAY PAR for his stock is not discharged by transfer to an innocent purchaser. Chilson v. Cavanagh, 160 Pac. 601.

ONTARIO.

FIDUCIARY RELATIONSHIP OF DIRECTORS. The majority directors of a construction company must account to the minority stockholders for profits from a contract procured by them in favor of a company separately organized by them. The majority stockholders cannot ratify and approve what was done, so as to release all claim against the directors. Cook v. Deeks, 27 D. L. R. 1.

SASKATCHEWAN.

STOCK AT DISCOUNT OR BY WAY OF BONUS may not be issued by a corporation. A subscriber thereto is liable to a liquidator of the company in the full amount. Re The City Cold Storage Co. Ltd., in Liquidation, 30 D. L. R. 574.

TENNESSEE.

PERSONS ENTITLED TO DIVIDENDS. A dividend was declared in January, 1916, to be held in the treasury and paid to stockholders when ordered by the board of directors at a later date. Certain stockholders sued the corporation for dividends due with respect to shares held by them when the declaration was made. In defense it was set up that the directors had not ordered payment and that plaintiffs had parted with some of the shares sued upon. It is held, however, that the declaration segregated the earnings from the general assets of the corporation and appropriated them to the then stockholders. To effectuate this, it is not necessary that the declaration of dividend embody an express order for payment to the stockholders. Parting with shares does not affect the right to recover dividends declared during ownership. "The rule undoubtedly is that a dividend on particular shares belongs to him who owns the shares on the date of the declaration of the dividend, as between the vendor and the vendee of the shares; and this is true notwithstanding the time of payment to stockholders may be postponed to a date subsequent to the transfer." The corporation, however, has a right to a reasonable time within which to make payment. The period from January to May 15, 1916, may or may not be such a reasonable time; defendant is entitled to make further defense on the ground that it is not, if it is so advised. Wallin v. Johnson City Lumber & Mfg. Co., 188 S. W. 577.

TEXAS.

SENDING OUT PROXY SLIPS WITH NOTICES OF STOCKHOLDERS' MEETING, with two proxy forms, one with the names of the proxies printed therein and the other left blank, is proper. "No deception was practiced in securing proxies—every one was given an opportunity to vote for anyone he chose to represent him in the meeting, and it seems to us that this manner of proceeding was fair, and insured practically a fuller meeting of stockholders than otherwise. The expense for printing the extra slips and sending them with the regular notices was but a trifle, and should not be considered." Bound v. Stephenson, 187 S. W. 1031

CANCELLATION OF NOTE AND MORTGAGE GIVEN IN PAYMENT FOR STOCK will be ordered at the instance of a subscriber. Neither note or mortgage constitutes property in the sense of the requirement that "no corporation shall issue stock or bonds, except for money paid, labor done or property actually received." (Article 12, Sec. 6, State Constitution) Prudential Life Ins. Co. of Texas v. Pearson, 188 S. W. 513.

AUTHORITY OF SECRETARY. An unauthorized street corner conversation by a corporate secretary with reference to the record owner of real estate does not bind the corporation. The secretary had never conveyed any of the corporation's property without consent of the board of directors. Hume v. Carpenter, 188 S. W. 707.

WASHINGTON.

EXPENSES OF A PROMOTING SYNDICATE to the extent of, but not beyond, the amount actually expended, are collectable from incorporators, when through no fault of the incorporators, the purposes of the corporation cannot be carried out and no stock is sold. Lindenberger Cold Stor. & C. Co. v. J. Lindenberger, 235 Fed. 542.

TRUSTEES HOLDING OVER AFTER THE TERM fixed in the articles of incorporation bind the corporation by their acts until election and qualification of their successors. There is no presumption, however, that trustees continue in office after expiration of the fixed period. Barnard Mfg. Co. v. Ralston Milling Co., 160 Pac. 309.

WISCONSIN.

STOCK SUBSCRIPTIONS PAYABLE IN INSTALLMENTS are legal, in the absence of restrictions in the corporation's charter or the general law of the state. Columbus Institute v. Conohan, 159 N. W. 720.

CALLS FOR PAYMENTS OF INSTALLMENTS to stock subscriptions by directors pursuant to the provisions of section 1754, Statutes of Wisconsin, are unnecessary when the subscription contract fixes the time of payment. Columbus Institute v. Conohan, 159 N. W. 720.

FOREIGN CORPORATIONS.

KENTUCKY.

WHAT CONSTITUTES "WILLFUL" FAILURE TO FILE REPORT. A West Virginia corporation doing business in Kentucky was required, as a public service company, to file an annual report before the first day of October (Kentucky Statutes, Sec. 4078). It did not file its report for 1914 until December 8th of that

year. The lower court, pursuant to Section 4087, adjudged a penalty against the corporation of $4,350. It appeared from the evidence that the corporation had delayed in making its report because the clerk in the State Auditor's office advised the assistant secretary and treasurer of the corporation to include in the report assessed valuation of property in various counties, some of which would not be known until after the first of October. This shows, in the opinion of the Kentucky Court of Appeals, that the failure to file within the statutory period was not "willful." Judgment against defendant is, therefore, reversed. Cases reviewed in the opinion where failure to report were not excused include instances of want of knowledge of the law, failure of the auditor to notify the corporation and failure of corporations to remove obstacles to their compliance with the laws, which are within their power to remove. United Fuel Gas Co. v. Commonwealth, 188 S. W. 660.

MINNESOTA.

SERVICE OF PROCESS. A corporation selling shoes in the state through stores known and advertised as "Selz Royal Blue" stores and which agree to handle its products exclusively, is "doing business" so as to render service upon its state representative valid against it. Prigge v. Selz, Schwab & Co., 158 N. W. 975.

NEW YORK.

RIGHT TO MAINTAIN ACTION in this state against a foreign corporation where both parties are residents of the foreign state, pursuant to section 1780 of the Code of Civil Procedure, is not mandatory upon the Court, but the discretion to entertain or exclude such suits cannot be exercised arbitrarily. Waisikoski v. Philadelphia & Reading C. & I. Co., 173 N. Y. App. Div. 538.

SERVICE OF PROCESS upon the agent of a Virginia corporation operating a hotel in West Virginia, is not valid against the corporation where the agent merely had an office in New York for convenience of those desiring to secure accommodations at the hotel and for the purpose of advertising it. The business of advertising and getting custom is an incident, and not a substantive part of the primary business of a hotel corporation. Krakowski v. White Sulphur Springs, 161 N. Y. Supp. 193.

TENNESSEE.

SALES ON CONSIGNMENT NOT "DOING BUSINESS." A Wisconsin corporation appointed an agent at Memphis to whom it shipped wagons to be sold for their account. The agent agreed to store, insure and pay taxes upon the wagons until sold or returned. The corporation was not "doing business" in the state in a manner requiring qualification under the foreign corporation laws. Mitchell Wagon Co. v. Poole, 235 Fed. 817.

STOCKHOLDERS OF A NON-COMPLYING FOREIGN CORPORATION ARE LIABLE AS PARTNERS on agreements, though contracted in the corporate name, although the stockholders were unaware that the foreign corporation had not complied. The corporation in question was organized in Delaware, and the claim against its stockholders was for work performed in Tennessee. Cunnyngham v. Shelby, 188 S. W. 1147.

TEXAS.

FOREIGN COMMERCE. Carrying merchandise from ports of Texas to foreign ports is essentially foreign commerce and does not subject a corporation to the necessity of compliance with the foreign corporation laws. W. B. Clarkson Co. v. Gans S. S. Line, 187 S. W. 1106.

MORE THAN ONE NAME MAY BE USED BY A CORPORATION. "In addition to the name given it by its charter it may acquire other names by user or reputation." The Gans Steamship Line may sue upon contracts made in the name of the "Globe Line," since it is shown that it does business under that name. "There is no statute in this state which requires a corporation to contract in the name given it by its charter and, in the absence of such statute, we cannot hold that a contract executed by a corporation in a name other than that given by its charter is not binding on the corporation." W. B. Clarkson Co. v. Gans S. S. Line, 187 S. W. 1106.

VERMONT.

FAILURE TO COMPLY WITH THE FOREIGN CORPORATION STATUTES disables a corporation from bringing an action in the state upon any contract made by it in Vermont. The statute provides that this prohibition shall apply to an assignee of the corporation. This, however, does not prevent a receiver of a foreign corporation from suing in the corporate name. Underhill v. Rutland R. Co., 98 Atl. 1017.

WISCONSIN.

RIGHT TO RESCIND THE PURCHASE OF STOCK issued at less than par by a Michigan corporation is denied, because it would aid an illegal transaction. In Wisconsin "No corporation shall issue any stock or certificate of stock except in consideration of money or of labor or property estimated at its true * * * value, actually received by it, equal to the par value thereof * * * and all stocks * * * issued contrary to the provisions of law * * * shall be void." (Stats. Section 1753.) This applies to foreign corporations because of section 1770b 20 of the Wisconsin statutes, which is as follows: "All foreign corporations and the officers and agents thereof doing business in this state, shall be subjected to all the liabilities and restrictions that are, or may be imposed upon corporations of like character, organized under the laws of this State, and shall have no other or greater powers." Thronson v. Universal Mfg. Co., 159 N. W. 575.

TAXATION.

ARKANSAS.

INHERITANCE TAX ON SHARES OF FOREIGN CORPORATIONS. Shares of stock in an Oklahoma corporation owned by an Arkansas decedent are subject to the transfer tax imposed by Acts of Arkansas, 1913, p. 825, although a transfer tax thereon has also been paid in Oklahoma. In re Clarkson's Estate, 188 S. W. 834.

ILLINOIS.

IN FIXING THE CAPITAL STOCK TAX, assessable on the excess of capital stock value over tangible property of domestic corporations, the state board of equalization has no authority to make an assessment of the tangible property. "While the board is not necessarily bound by the market quotations of the shares of stock in determining their value, these cannot be disregarded and an assessment made without evidence and in violation of the rules of the board will not be sustained, even though the assessment of the tangible property were regarded as lower than it should be." Calumet & Chicago Canal & Dock Co. v. Stuckart, 113 N. E. 894.

MISSISSIPPI.

ASSESSMENT OF CAPITAL STOCK AND SURPLUS OF A BANK at its full value is legal although the property of individuals is assessed at a valuation of 66 cents on the dollar. Magnolia Bank v. Board of Sup'rs, 72 So. 697.

PENNSYLVANIA.

THE TIME FOR FILING REPORTS OF CORPORATIONS. The capital stock, bonus and loan reports are by the act of June 2, 1915, P. L. 730, required to be filed "annually on or before the last day of February, for the calendar year next preceding." The penalty, however, applies only for default after March 31. The law further provides that "the Auditor-General may, upon proper cause being shown, extend the time of filing returns for a period not exceeding thirty days." The Attorney-General has held that reports may be filed at any time in March without penalty (2 Corporation Journal 207) and now holds that the Auditor-General may extend the time for filing return for a period not exceeding 30 days after March 31. This extension may be granted after March 31, that is, it is not essential to obtain the extension before the expiration of the last day to file without penalty. The Auditor-General, in effect, can waive the penalty on all returns filed in April. 19 Dauphin Co. Rep. 397. The ruling on page 190 of the Corporation Journal is over ruled.

A CLAIM FOR BONUS ON CAPITAL STOCK due the Commonwealth prior to the Act of June 15, 1911, P. L. 956 is not discharged by judicial sale of the property and franchises of the corporation in an opinion by the Attorney General to the Auditor-General reported in 19 Dauphin Co. Rep. 402.

SASKATCHEWAN.

PROVINCIAL LICENSE FEES ON DOMINION COMPANIES. In a series of cases arising in Canada and finally resulting in an opinion by the Privy Council of England, (See 2 Corporation Journal 186) the Provinces were held not to have the power to exclude corporations organized under the laws of the Dominion from doing business within their respective jurisdictions, and provincial laws requiring the payment of license fees as a prerequisite to doing business by Dominion companies were invalid under the British North America Act, which in Canada is analogous to the Federal Constitution in this country. In a recent case arising in Saskatchewan a Dominion company doing business in that province refused to pay the annual license fee imposed on foreign corporations and its name was struck off the register of joint stock companies. There is a penalty for each day the license fee remains unpaid, but contracts are not affected. The court held that since the corporation's status and capacity to carry on the business were not affected the tax is within the power of the Province to impose, that failure to pay the tax or to become registered or licensed does not preclude a Dominion company from carrying on business in the Province, but the penalties prescribed by the act for carrying on business without being registered or licensed may be assessed against it as well as against any other extra-provincial or foreign corporation. Harmer v. MacDonald Co., Ltd., 30 D. L. R. 640. The case has been appealed.

WISCONSIN.

LIABILITY OF TRUST ESTATES TO LOCAL INCOME TAX. A recent case in Wisconsin holds that a trustee residing in Wisconsin must deduct the tax from all dividends and interest received by him for the estate for which he acts although the beneficiary may be a resident of another state. The fact that the trustee is a resident of the State makes the income taxable. There is nothing unconstitutional in so taxing income and, the court says, the legislative intent to tax it is clear, although much might be said both for and against the legislative policy involved. State v. Widule, 159 N. W. 630.

A wise and fair legislative policy is to tax the income of estates according to the residence of the beneficiaries and not according to the residence of the fiduciary. The Massachusetts income tax law contains an exemplary provision, taxing income of estates only "to the extent that the persons to whom the income of the trust is payable, or for whose benefit it is accumulated, are inhabitants of this Commonwealth."

PRICE FIXING.

OKLAHOMA.

FIXING RESALE PRICES. A manufacturer of medicines and other preparations sold its goods through persons to whom it assigned restricted territory under an agreement that sales be made at prices fixed by the manufacturer and that no other business be engaged in. It is held that the manufacturer cannot recover for goods sold under such an agreement. To allow recovery would further a combination illegal under the Sherman anti-trust law. Stewart v. W. T. Rawleigh Medical Co., 159 Pac. 1187.

UNFAIR METHODS OF COMPETITION.

UNITED STATES CIRCUIT COURT OF APPEALS, EIGHT CIRCUIT.

THE MOLINE PLOW COMPANY has a trade mark consisting of the letters "M. P. Co." in the form of a monogram. The Star Manufacturing Company used a monogram in similar form upon plowshares fitted to replace those upon plows manufactured by the Moline Plow Company. This constitutes unfair competition. "The duty is imposed upon every manufacturer or vendor, especially when he enters upon a field previously occupied by his competitors, to so distinguish the articles he makes, or the goods he sells, from those of his rival that neither their names nor their dress will be likely to deceive the public or to mislead the ordinary buyer into purchasing his goods as those of his competitor, or create confusion in the trade between the rival articles." Moline Plow Co. v. Omaha Iron Store Co., 235 Fed. 519.

UNITED STATES DISTRICT COURT, N. J.

"LINOLEUM" is a fanciful name applied by the inventor to a floor covering made of oxidized oil combined with ground cork, wood flour, or similar vegetable material usually impressed upon burlap. Manufacturers of linoleum are not entitled to injunction against a manufacturer applying the term "linoleum" to a saturated felt paper, painted to resemble genuine linoleum. The gravamen of plaintiff's charge is that the public is deceived and the genuine article is discredited. Such damages, however, are not the result of attacks upon plaintiff's property rights. Armstrong Cork Co. v. Ringwalt Linoleum Works, 235 Fed. 458.

UNITED STATES DISTRICT COURT, ARIZONA.

PROTECTION OF "COCA-COLA" against "KOKE" and "DOPE," in imitation form and packages, is decreed in Coca-Cola Co. v. Koke Co. of America, 235 Fed. 408.

TRUSTS AND MONOPOLIES.

UNITED STATES DISTRICT COURT. (N. D., ILL., E. D.).

THE ASSOCIATED BILL POSTERS is organized to control the business of national poster advertising by excluding from the boards of its members advertisers who patronize competitors in any locality where there are billboards belonging to members. It violates the Sherman Law. "The rule of 'reasonable restraint' has no application here,—for the reason that this is not a case of mere restraint, but of total exclusion. Even perfection in any line of business is not to be thus procured." United States v. Associated Bill Posters, 235 Fed. 540.

INCOME TAX.

REPORT OF THE COMMISSIONER OF INTERNAL REVENUE.

Many statements of general interest are made in the annual report of the Commissioner which appeared November 27. For the benefit of our readers we print the following partial summary:

During the year much attention has been given to a better systemization of the work, both in the field and in the office, but experience has shown the absolute necessity for a larger force in order to properly audit the returns and make examinations. The present field force consists of about 274 men.

366,443 returns were filed by corporations of which
190,911 showed a taxable income aggregating $5,184,442,389, and
175,532 showed a net loss or deficit.

Because of the lack of sufficient force of clerks, the auditing of corporation returns is more than a year in arrears. Not a single return filed in 1916 has been audited, the tax being assessed on returns as they came in. No feature of the administrative work of the bureau as it relates to corporations has been more annoying than has been that growing out of the delay in auditing the returns and making examinations. In the case of examination of the books of corporations by the field force it has been found advisable and necessary to examine books covering returns made four, five or six years ago. The delay in making audits and examinations can be remedied only in providing such additional competent help, both in the field and in the office, as will make and keep the work current.

In all cases where the revenue agents have discovered additional tax due the Government on returns made more than three years before and the summary assessment is barred by the statute of limitation, and where the tax is believed to be actually due and collectible, the matter of its collection by suit has been referred to United States district attorneys. The Government has been forced in several such instances to institute suit. These suits chiefly involve lumber and mining corporations, and are designed to test, to a final judicial determination, certain rulings to the effect that the stumpage and depletion deductions should not exceed the cost of the assets extinguished or depleted. So far as this question has been

passed upon by the lower courts, they have sustained the position of the corporations, viz.: that they have the right to exclude from their taxable income on account of stumpage or depletion an amount equivalent to the market value, as of January 1, 1909, of the assets depleted. (Note. This date under the present law is March 1, 1913.)

336,652 individual returns were filed in 1916. 940 were filed by American citizens residing abroad as against 1,291 for the preceding year. 669 non-resident aliens filed returns showing an aggregate net income from American sources of $10,887,493.70. 34,132 withholding agents reported to the Government; showing $6,591,911.76 of normal tax collected at the source. Approximately 38,000 persons had their entire tax liability satisfied by deduction at the source.

The Commissioner again calls attention to the necessity of receiving more information from the sources of income and of having all taxpayers report when their gross income exceeds $3,000 instead of on a minimum net income of the same amount as at present.

On July 1, 1915, there were pending 6,199 claims for refund or abatement of the tax, amounting to $4,325,653.51. During the following year 46,197 claims were received, amounting to $10,400,043.52 and 42,304 claims were disposed of, amounting to $10,146,422.71, leaving on hand July 1, 1916, 10,092 claims, amounting to $4,579,274.32. These figures include claims for all kinds of internal revenue taxes and are not only for income taxes.

The following specific recommendations are made for the amendment of the present income tax law:

(a) To require returns of annual gross income of $3,000 or over instead of annual net incomes of like amounts.

(b) To require that returns of income be filed in the district in which the person making the return or for whom the return is made has his legal residence.

(c). To provide authority to enable the United States consular offices to make, under the direction of the commissioner, examinations and inquiries concerning the incomes of American citizens residing within their respective consular districts and compel attendance and testimony within the power of the United States similar to the provisions applicable to examinations and investigations provided to be made by internal-revenue agents.

(d) That the provisions of law requiring the withholding of the normal income tax at the source of the income be repealed, except as to the income of non-resident alien individuals and corporations received from sources in the United States, and that a provision for information at the source be provided.

T. D. 2381 has been revised and a new method is prescribed of collecting the tax on dividends when the actual owner is a non-resident and the record owner a resident (p. 602).

T. D. 2313 as to payment of income tax for non-resident aliens has been amended (p. 605).

(NOTE.—The page references are to our Income Tax Service, in which these rulings, decisions and regulations are printed in full).

RULINGS AND REGULATIONS.

For preceding reference to rulings see Corporation Journal page 249.

A non-resident alien may not claim the personal exemption of $3,000 or $4,000 prior to the close of the year, when he may do so only by filing a return of all his income from all sources in the United States. The method to be adopted for refunding to him the tax withheld during the year has not yet been decided upon by the Treasury Department (p. 587).

Form 1007 is the proper form to be used by citizens or residents of the United States in claiming exemptions when collecting foreign dividends (587).

Income accruing to a minor child must be included in the father's return and no personal exemption can be claimed on behalf of the child (588).

The "cash value" of stock dividends should be calculated according to the value of the surplus distributed (588).

The 1916 form of return (Form 1031) for use by corporations is reproduced on pp. 589–592.

Form 1012 is to be adapted and used by debtor corporations in reporting tax withheld from dividends paid to non-resident alien corporations (p. 593).

The operation of the two-year statute of limitation in actions to recover taxes is explained by the Circuit Court of Appeals (p. 594).

Exempt corporations enumerated in Sec. 11 of the law include foreign as well as domestic corporations (p. 595).

How to determine the fair market value of stock on March 1, 1913, is explained in a letter on p. 596.

Claims for refund once rejected because of the statute of limitation may be reopened under Sec. 4 of the law if the question involves an examination of the return (p. 597).

When the record owner of stock is not the actual owner, and the actual owner is a resident of the United States the actual owner need not be disclosed and the record owner will not be taxed under the ruling in T. D. 2382 (p. 597).

Certificate No. 1004 has been again revised and is now to be used by non-resident alien individuals, firms and corporations (p. 598).

Exempt corporations under Sec. 11 of the law are now required to withhold the tax on payment of interest, salaries, etc., to others (p. 601).

WAR TAX.

RULINGS AND REGULATIONS.

Since our last issue (see Corporation Journal p. 249) a synopsis of decisions relating to the tax on wines, liqueurs, cordials, etc., has appeared (pp. 442–447) and also a ruling on imported still wines and sparkling and artificially carbonated wines (p. 448).

State inheritance taxes are deductible from the gross estate in determining the tax due under the federal estate tax law (p. 449).

(NOTE.—The page references are to our War Tax Service which reports all rulings and regulations on the estate tax, munition manufacturer's tax, the corporation excise tax and special taxes of the revenue act of September 8, 1916).

FEDERAL RESERVE.

RULINGS AND REGULATIONS.

Since our last issue (see Corporation Journal p. 250) informal rulings have been made regarding member bank reserves in federal reserve banks, penalty for failure to comply with interlocking directorates provision of the Clayton Act, legality of acts of a director ineligible under the Clayton Act, extent of real estate loans, and requirements as to residence of Class A directors (pp. 605 and 606).

The Law Department has published opinions on the presentment of bills for acceptance, loans on city real estate, real estate loans by suburban central reserve city national banks, promissory notes by member banks secured by county warrants, endorsements made on separate paper attached to original instrument, and savings accounts as time deposits (pp. 606-611).

Statements have been issued by the Federal Reserve Board on the election of Class A and Class B directors, on the payment of reserves, on the renewal of mortgage loans, on the conversion of 2% United States bonds during 1916, and on the earnings and expenses of the Federal Reserve Banks for the nine months ending September 30, 1916 (pp. 611-617).

(NOTE.—The page references are to our Federal Reserve Act Service which reports in full all rulings, regulations and opinions of the Federal Reserve Board).

LEGISLATION.

Congress convened on December 4, 1916. Judging by the great number of important bills of general interest introduced on the first day, the session will be a very busy one. It is probable the usual holiday recess will be eliminated this year in order to complete the programe of the Administration.

Forty-two state legislatures will be in session at the beginning of 1917. Arrangements should be made now to receive the reports of proposed legislation affecting your business. We invite you to communicate with our Legislative Department, 37 Wall Street, New York, as to legislation in Congress and the State legislatures.

TRADE COMMISSION.

No rulings or opinions have been issued by the Federal Trade Commission since our last report (see Corporation Journal p. 233). Present indications are that important announcements will be made in the near future.

THE COMPANY FOR LAWYERS

The Corporation Trust Company System

DIRECTORS

Oakleigh Thorne — George R. Sheldon — C. E. Mitchell
William H. Chesebrough — Kenneth K. McLaren

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George R. Sheldon, Vice-President
Raymond Newman, General Manager
Horace S. Gould, Secretary
B. Stafford Mantz, Treasurer
George E. Holmes, Assistant Secretary
John R. Turner, Assistant Secretary
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Wilmington Secretary
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1202 Oliver Building, Pittsburgh
112 West Adams Street, Chicago
15 Exchange Place, Jersey City
1428 Land Title Bldg., Philadelphia
1024 Federal Reserve Bank Building,
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501 Colorado Bldg., Washington, D. C.
158 State Street, Albany, N. Y.

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